OSA No.21/2003

17.03.2006 Present: Mr. Ashwani Sharma, counsel for the appellant.

Mr. Sanjay Kaushal, with Mr. S.M. Goel, counsel for the respondents.

This appeal is directed against order dated 21.11.2003, vide which learned Single Judge has set aside ex-parte decree subject to cost of Rs.10,000/-. The Himachal Pradesh Financial Corporation is aggrieved of the said order.

The learned counsel for the appellant has contended that the learned Single Judge while setting aside the ex-parte decree ought to have made some condition in regard to the deposit of the amount or furnishing of the security by the respondents. In support of his submission, the learned counsel has cited ***V.K. Industries and others versus M.P. Electricity Board, Rampur, Jabalpur (AIR 2002 SC 1151)***. In answer to this submission, learned counsel appearing on behalf of the respondents contended that the respondents have taken a loan of Rs.4,00,000/- in 1974, and in 1984 industrial unit of the respondents was taken over by the Financial Corporation and the same was sold for realization of the loan amount. In regard to the present suit, learned counsel for the respondents contended that the respondents had not been served and a finding in this regard has been recorded by the learned Single Judge and, therefore, the respondents cannot be called upon to furnish security or to deposit the decretal amount.

We have heard the learned counsel for the parties at length and have carefully gone through the record and also the judgment cited by the learned counsel for the appellant.

It is not in dispute that in order to realize the amount, which has been given as loan to the respondents, the appellant had taken proceedings under Section 29 of the H.P. Financial Corporation Act and industrial unit of the respondents was sold for the realization of the amount and substantial amount was realized. It is only the remaining amount, which forms the part of the subject matter of the present suit. In such circumstances, the judgment cited by the learned counsel for the appellant would not apply. Moreover, ex-parte decree has been set aside subject to payment of cost of Rs.10,000/- and that cost has already been deposited. However, keeping inn view the interest of the Financial Corporation, we direct the Registry to list the suit immediately and we have no manner of doubt that taking into consideration the fact that the suit was filed in 1989, the same would be decided expeditiously, preferably within one year. The appeal is dismissed.

CMP No.380/2003

Disposed of in view of the disposal of the main matter.

(V.K. Jhanji), J.

March 17, 2006(sd) **(Surjit Singh), J.**